

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTSC 13-08 Relating to Property Tax

SPONSOR(S): Finance & Tax Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Aldridge	Langston

SUMMARY ANALYSIS

The bill contains several changes to statutes related to ad valorem taxation. The bill:

- Clarifies that a commercial mail delivery service postmark qualifies for the filing of certain applications and returns by taxpayers,
- Authorizes the use of electronic mail by property appraisers and value adjustment boards for certain documents with taxpayer consent,
- Requires notices related to tax roll certification to be provided on property appraiser websites,
- Provides long-term lessees the ability to retain their homestead exemption and related assessment limitations and exemptions in certain instances,
- Allows for an automatic renewal for assessment reductions related to certain additions to homestead properties if used as living quarters for a parent or grandparent, and aligns related appeal and penalty provisions to those for homestead exemptions,
- Deletes a statutory requirement that the owner of a property must reside upon the property to qualify for a homestead exemption (This requirement has been ruled unconstitutional by the Florida Supreme Court),
- Clarifies the ability of local governments to provide property tax exemptions for persons 65 and older,
- Removes a residency requirement that a senior disabled veteran must have been a Florida resident at the time they entered the service to qualify for certain property tax exemptions, consistent with a constitutional amendment to remove this residency requirement approved in November 2012,
- Repeals the ability for certain limited liability partnerships to qualify for the affordable housing property tax exemption,
- Exempts property used exclusively for educational purposes when the entities that own the property and the educational facility are owned by the same natural persons.

The Revenue Estimating Conference (REC) has estimated impacts of the three provisions in the bill expected to have a revenue impact on local government. The provision related to property used for educational purposes would have a recurring negative impact of -\$0.1 million beginning in FY 2014-15. The provision related to affordable housing would have a positive impact in FY 2013-14 of \$23.4 million (\$117.2 million recurring). The provisions relating to living quarters for a parent or a grandparent are expected to have a positive insignificant impact.

Except as otherwise expressly provided in the bill and except for the effective date section, which shall take effect upon the bill becoming a law, the bill shall take effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill contains several changes to statutes related to ad valorem taxation.

Filing Dates for Returns and Applications

Current Situation

Section 192.047, F.S., instructs property tax administrators to determine the date a person filed a property tax return or an application for exemption or special classification by using the United States Postal Service postmark date. Taxpayers that use commercial mail delivery service do not receive a United States Postal Service postmark date, and thus, may not receive the same amount of time to file returns and applications.

Proposed Change

The bill amends the date of filing provisions to allow a postmark from the United State Postal Service or a commercial mail delivery service to be considered the date of filing for returns and applications.

Electronic Notices Related to Property Taxes

Current Situation

Property appraisers must periodically mail notices of proposed property taxes, renewal applications for exemptions, and notices of intent to deny certain exemptions to taxpayers. Value adjustment boards are required to mail board decisions to property appraisers and petitioners.

Proposed Change

The bill creates s. 192.130, F.S., authorizing property appraisers to obtain permission from taxpayers to provide notices of proposed property taxes, renewal applications for certain exemptions and notices of intent to deny exemptions by electronic mail (email), rather than by mail. The bill authorizes value adjustment boards to obtain permission to provide board decisions by email, rather than by mail.

In order to provide these items by email, property appraisers and value adjustment boards are required to obtain consent from the recipient in writing and verify the email address of the recipient. The form used to obtain the recipient's consent must contain a disclaimer that informs the taxpayer that e-mail addresses are public records, and as such, subject to disclosure pursuant to a public records request. If a document is sent by email and the email is returned undeliverable, the property appraiser and value adjustment board must send the item by mail. Documents sent by email must comply with statutory requirements as to notice and form. The sender must renew the consent and verification requirements every 5 years.

Publication of Notice Concerning Certified Assessment Rolls

Current Situation

After property appraisers certify their property assessment rolls, they are required to publish a notice of the date of certification in a local periodical meeting certain statutory requirements as to publication frequency, etc.¹

Proposed Change

¹ Section 193.122(2), F.S.
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The bill requires property appraisers to publish the notices of the date of certification on their websites in addition to the notices published in a local periodical.

Ad Valorem Tax – Homestead Exemption and Assessment Limitations

Current Situation

Florida provides ad valorem tax exemptions and assessment limitations for homestead property.² Both property owners and long-term lessees³ are entitled to homestead exemptions and assessment limitations if they use their property as a homestead.

Property generally is assessed at just value on January 1 of the year following a “change in ownership.” A change of ownership is any sale, foreclosure, or transfer of legal or beneficial title.⁴ However, certain title transfers—a transfer of title to correct an error, a transfer between legal and equitable title, and a transfer when the owner is listed as both a grantor and grantee—do not constitute a change of ownership when the person entitled to the homestead does not change after the transfer of title.

Proposed Change

For long-term lessees that qualify for homestead tax exemptions and limitations, the bill adds to the list of transfers that do not constitute a change of ownership a transfer of title that occurs when the person who is entitled to the homestead tax treatment is a long-term lessee entitled to homestead pursuant to s. 196.041(1), F.S., and that lessee continues to be entitled to homestead treatment after the transfer of title. This makes explicit in statute current practice by property tax administrators.

Current Situation

When a homestead owner sells homestead property and purchases a new homestead, he or she is entitled to transfer a portion of the assessment limitation accrued on the prior homestead to his or her new homestead.⁵ Property appraisers determine the amount of assessment limitation that can be transferred and, if the property owner disagrees, the property owner can appeal to the value adjustment board.⁶ Property owners can appeal the value adjustment board decision to circuit court, but must do so within 15 days following the value adjustment board decision.⁷

Proposed Change

The bill extends the time for property owners to appeal value adjustment board decisions on transfers of assessment limitations from 15 to 60 days, which will align this court filing time frame with the general court filing time frame provided for challenges to tax assessments.⁸

Homestead Exemption; Living Quarters for Parents and Grandparents; Application

Current Situation

Counties may provide a reduction in assessed value for living quarters constructed on homestead property for the purpose of providing living quarters for parents or grandparents (granny flats).⁹ The

² See generally Fla. Const. Art. VII, ss. 4 and 6

³ Lessees are entitled to homestead exemptions and assessment limitations if they use the property as a homestead and have a lease of at least 98 years (50 years if executed prior to June 19, 1973). See s. 196.041(1), F.S.

⁴ Section 193.155(3)(a), F.S.

⁵ See Fla. Const. Art. VII, s. 4(d)(8)

⁶ Section 193.155(8)(1), F.S.

⁷ *Id.*

⁸ See s. 194.171(2), F.S.

authority for the granny flats reduction is in ch. 193, F.S., and thus, counties cannot use their current authority to waive the annual application requirement; the property owner must apply for the assessment reduction every year.

If a property owner claiming the granny flats reduction willfully makes a false statement when applying for the reduction, a civil penalty of not more than \$1,000 applies, and the property does not qualify for the reduction for 5 years.

Proposed Change

The bill amends the granny flats reduction to allow counties to waive the annual application requirement. Additionally, the proposed bill requires property owners to notify the property appraiser when the property owner no longer qualifies for the reduction. The proposed bill removes the civil penalty and 5 year disqualification provisions from the granny flats reduction, and inserts authorization to assess for any reductions improperly claimed for the prior 10 years, a penalty equal to 50 percent, and 15 percent interest per year. These penalties are the same as those for improperly claimed homestead exemptions. The property appraiser would be required to give the property owner 30 days to pay the assessment; after 30 days, the property appraiser must file a lien against all property of the property owner in the county. If a taxpayer improperly receives the reduction due to a clerical mistake or omission of the property appraiser, the property appraiser may not impose penalty or interest.

Change in Statute to Conform to Amendment 2 Approved by the Voters in November 2012.

Current Situation

In November of 2012, the voters approved a constitutional amendment regarding a property tax exemption for certain disabled veterans. Prior to the amendment, Florida provided a property tax exemption for disabled veterans' homestead property if the veteran was 65 or older, permanently disabled with a combat related disability, and was a resident of Florida at the time of entering military service of the United States.

The amendment removed the requirement that the veteran be a resident of Florida at the time of entering military service.

Proposed Change

The bill amends ss. 196.082(1) and (3) to conform to the amendment approved by the voters.

Homestead Exemption; Dependents Residing on the Property

Current Situation

Garcia v. Andonie, 101 So.3d 339 (Fla. 2012), is a property tax case involving the right to a homestead exemption when the owner of the property does not reside on the property, but the owner's dependent maintained permanent residence upon the property. Section 196.031(1)(a), F.S., provides in pertinent part that:

Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption ... as defined in s. 6, Art. VII of the State Constitution [homestead exemption].

However, Article VII, s. 6(a) of the Florida Constitution does not include the language requiring the owner to reside upon the property to qualify for the homestead exemption. Note that the pre-1968 version of the Florida Constitution did contain the residency requirement.

In *Andonie*, the Florida Supreme Court found the residency requirement in s. 196.031(1)(a), F.S., to be unconstitutional.

Proposed Change

The bill strikes the residency language from s. 196.031(1)(a), F.S.

Additional Homestead Exemption – Person Age 65 or Older – Amendment 11 Approved by the Voters in November 2012 – Implementing Bill Glitch

Current Situation

Since 1999, cities and counties have been authorized to offer an additional homestead exemption of up to \$50,000 to certain low income seniors.¹⁰

In November of 2012, the voters approved a constitutional amendment that authorized the Legislature to allow cities and counties to grant an additional homestead exemption for persons 65 or older.¹¹ The proposal would allow an exemption equal to the assessed value of homestead property when the just value is less than \$250,000. The owner would still be required to be aged 65 years or older and maintain his or her permanent residence on the property; however, the owner must have maintained his or her permanent residence thereon for a minimum of 25 years. The same income limitations apply to both exemptions.

In 2012, the legislature passed a bill that would automatically implement this amendment upon voter approval.¹² However, a drafting oversight eliminated the “up to” language for the existing exemption. Technically, the current statute would now allow cities and counties to offer an additional exemption to certain low income seniors of \$50,000 only. This oversight was inadvertent.

Proposed Change

The bill amends s. 196.075(2)(a), F.S., to reinsert the “up to” language and correct the 2012 drafting error.

Ad Valorem Tax Exemption – Affordable Housing Property

Current Situation

Since 1999, Florida has provided an ad valorem exemption for affordable housing property when the property is wholly-owned by a non-profit corporation that qualified as a charitable 501(c)(3) organization and meets certain other statutory requirements. In 2009,¹³ the statute was amended to also allow property to qualify if it was owned by a limited liability partnership and the only general partner of the limited liability partnership was a non-profit corporation that qualified as a charitable 501(c)(3)

¹⁰ See Art. VII, sec. 6(d)(1) of the Florida Constitution and s. 196.075, F.S.

¹¹ Amendment 11, 2012 General Election. The amendment originated as CS/HJR 0169 (2012). The text of the amendment can be found on the website of the Florida Department of State at <http://election.dos.state.fl.us/initiatives/fulltext/pdf/10-89.pdf> (last visited March 18, 2013).

¹² Ch. 2012-57, Laws of Florida.

¹³ The original 2009 legislation was ruled to have violated the unfunded mandate provision of the Florida Constitution, Article VII, section 18(a), and potentially the single subject rule of the Florida Constitution, Article III, section 6. See *City of Weston, Florida v. The Honorable Charlie Crist, et. al.*, 2009-CA-2639 (Fla. 1st Circuit 2010). The legislation was passed again in 2011. Ch. 2011-15, Laws of Florida.

organization. Since the change was enacted, several for-profit limited liability partnerships have restructured to take advantage of the tax exemption.

Proposed Change

The bill amends the affordable housing property exemption to remove the authority of a limited liability partnership that merely has a non-profit general partner that is a charitable 501(c)(3) organization to qualify for the exemption.

Educational Property

Current Situation

An educational institution and its property are exempt from ad valorem tax in Florida.¹⁴ Educational institutions often separate their property into separate corporate entities for business planning purposes. In an effort to address this situation, Florida also exempts property that is not directly owned by the educational institution, as long as the property is used exclusively for educational purposes and is owned by the identical owners of the educational institution. A recent Attorney General's opinion concluded that this exemption does not apply when both the property and the educational institution are in separate corporations and those corporations are owned by the identical people.

Proposed Change

The bill extends the educational institution exemption to include situations when the property and the educational institution are owned by separate legal entities and those legal entities are owned by the identical people.

Effective Date

Except as otherwise expressly provided in the bill and except for the effective date section, which shall take effect upon the bill becoming a law, the bill shall take effect July 1, 2013.

B. SECTION DIRECTORY:

- Section 1: Amends s. 192.047(1), F.S., clarifying that a commercial mail delivery postmark qualifies for determining when certain applications and returns have been officially filed.
- Section 2: Creates s. 192.048, F.S., allowing property appraisers and value adjustment boards to transmit certain documents electronically with taxpayer consent.
- Section 3: Amends s. 193.122(2), F.S., requiring notices related to tax roll certification to be provided on property appraiser websites.
- Section 4: Amends s. 193.155(3)(a) and (8), F.S., providing long-term lessees the ability to retain their homestead exemption and related assessment limitations and exemptions in certain instances.
- Section 5: Amends s. 193.703(5) and (6), F.S., and creates s. 193.703(7), F.S., allowing for an automatic renewal for "granny flat" assessment reductions.
- Section 6: Amends s. 196.031(1), F.S., eliminating an unconstitutional requirement to qualify for a homestead exemption.
- Section 7: Amends s. 196.075(2), F.S., fixing a glitch related to the implementation of amendment 11, approved by the voters in November, 2012.

¹⁴ Section 196.198, F.S.
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- Section 8: Amends s. 196.082(1) and (3), F.S., removing a residency requirement that a senior disabled veteran must have been a Florida resident at the time they entered the service to qualify for certain property tax exemptions.
- Section 9: Amends s. 196.1978, F.S., repealing the ability for limited liability partnerships to qualify for the affordable housing property tax exemption.
- Section 10: Amends s. 196.198, F.S., exempting property used for educational purposes when the entities that own the property and the educational facility are commonly owned.
- Section 11: Provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference (REC) has estimated impacts of the three provisions in the bill expected to have a revenue impact on local government. The provision related to property used for educational purposes would have a recurring negative impact of -\$0.1 million beginning in FY 2014-15. The provision related to affordable housing would have a positive impact in FY 2013-14 of \$23.4 million (\$117.2 million recurring). The provisions relating to living quarters for a parent or a grandparent are expected to have a positive insignificant impact.

- #### 2. Expenditures:
- None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because parts of the bill may have a negative fiscal impact on local government revenues. However, an exemption may apply because the fiscal impact on local governments related to those parts of the bill appears to be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES